***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

W.P.No.20964 of 2005

% 4-01-2006

Between:

G.Mallaiah S/o.Late Kistaiah

…Petitioner

And

APSRTC, rep.by its Managing Director,

Musheerabad,Hyderabad & others.

…Respondents

! COUNSEL FOR PETITIONER: Mr.V.Narasimha Goud

^ COUNSEL FOR RESPONDENTS: Mr.V.T.M.Prasad, Standing Counsel.

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO. 20964 OF 2005

Dated 4th January 2006

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WRIT PETITION NO. 20964 OF 2005

O R D E R:

The petitioner is employed as driver in APSRTC. A charge sheet was issued to him, on 28.1.1994, alleging that he drove the bus on 22.11.1993, in a rash and negligent manner, causing an accident, in which a pillion rider of a two-wheeler died. He was also placed under suspension on 28.1.1994. Departmental enquiry was conducted by a Committee, comprising of two officials of the APSRTC, and a report was submitted on 27.1.1994. The petitioner was issued a show-cause notice, dated 1.7.1994, directing him to explain as to why the punishment of removal from service, shall not be imposed on him. Aggrieved thereby, the petitioner filed W.P.No.13996 of 1994. A criminal case in C.C.No.189 of 1999, on the file of the Judicial Magistrate of First Class, Miryalaguda, was also pending against the petitioner. In that view of the matter, the writ petition was disposed of on 25.10.1995,

setting aside the show-cause notice, leaving it open to the Corporation, to resume the disciplinary proceedings, after the disposal of the criminal case. The petitioner came to be reinstated on 25.10.1997.

The grievance of the petitioner is that he was not paid the full wages, from 28.01.1994 to 25.10.1997, and he seeks appropriate direction, in this regard.

Sri V.Narasimha Goud, learned counsel for the petitioner, submits that the show-cause notice, dated 1.7.1994, issued by the second respondent herein was set aside by this Court, in W.P.No.13996 of 1994, and thereafter, the petitioner was acquitted in the criminal case. He contends that once the petitioner has been reinstated into service, and no departmental proceedings ensued thereafter, the first respondent cannot withhold the salary, particularly when no specific order was passed, in relation thereto.

Learned Standing Counsel for the Corporation, on the other hand, submits that the departmental proceedings were not proceeded with, on account of the orders passed by this Court at various stages in W.P.No.13996 of 1994. He argues that the necessity or occasion for the respondents, to treat the period of suspension in a particular manner, would arise, if only the departmental proceedings are resumed.

The petitioner seeks a declaration that he is entitled to be paid full wages for the period from 28.1.1994 to 25.10.1997, and the consequential benefits for that period, in the form of fixation of pay, grant of increments, etc.

The departmental proceedings against the petitioner commenced, with the service of a charge sheet, dated 28.1.1994, upon him. On the same day, he was placed under suspension. Criminal proceedings, under Section 304-A of I.P.C., were also initiated. Departmental enquiry was conducted, by constituting a Committee of two officers. A report was submitted on 27.1.1994. The petitioner was issued a show-cause notice, dated 1.7.1994. The petitioner approached this Court, by filing W.P.No.13996 of 1994. It was pleaded that one of the members in the

enquiry committee, had conducted preliminary enquiry, and thereby incurred disqualification. This Court granted interim orders on 3.8.1994 in W.P.M.P.No.17144 of 1994. Not being aware of this, the second respondent passed an order dated 8.8.1994, directing removal of the petitioner from service.

The petitioner filed Contempt Case No.533 of 1994, complaining that, despite the interim orders granted by this Court, he was not reinstated into service. In the meanwhile, on realizing that the order of removal was passed against the petitioner on 8.8.1994, in contravention of the orders of this Court dated 3.8.1994, the second respondent issued proceedings dated 15.12.1994, revoking the order of removal. The petitioner, ultimately, came to be reinstated into service, with effect from 25.10.1997. It is represented that the criminal case has since ended in acquittal of the petitioner.

Whenever an employee is placed under suspension, the manner in which the period of suspension must be treated, has to be indicated, while concluding the disciplinary proceedings. If the employee is exonerated and the charges are dropped, the period of suspension deserves to be treated as ‘on duty’. Where any punishment is imposed, it shall be open to the employer to treat the period of suspension either as ‘on duty’, or as ‘not on duty, or as ‘leave’, subject to entitlement; depending on the facts and circumstances of the case.

In the instant case, the disciplinary proceedings, initiated against the petitioner, could not be proceeded with, on account of the orders passed by this Court in W.P.No.13996 of 1994. The enquiry report was set aside, and it was left open to the respondents, to resume the enquiry, after the criminal proceedings are concluded.

Even where a Criminal Court acquits an employee, of the charges, such an acquittal, by itself, does not bring about, the closure of the departmental proceedings. If the employer feels that no further action needs to be taken, in view of the judgment of the Criminal Court, a formal order is to be passed, dropping the

departmental proceedings. On the other hand, if the employer feels it appropriate to resume the proceedings, after the criminal proceedings are concluded, notwithstanding the acquittal; it shall be open to him to do so. In such an event, the proceedings have to be continued from the stage, where they were left, on earlier occasion. The manner in which the period of suspension must be treated, would obviously depend upon the outcome of the enquiry, so resumed.

After the petitioner was acquitted in the criminal case, for one reason or the other, the respondents did not apply their mind to the question as to whether the departmental proceedings, against the petitioner, must be resumed, or must be closed. Obviously because of this, there was no occasion for them to pass an order, in the matter of treating the period of suspension. It is stated that the petitioner is due to retire very shortly. Whatever may have been the justification for the respondents, in not taking necessary steps in the matter, so far, they are required to pass appropriate orders, without any further loss of time.

Hence, the writ petition is disposed of, directing the second respondent to take a decision, whether to drop the disciplinary proceedings initiated against the petitioner, or to resume the same. In case they are dropped, the manner in which the period of suspension shall be treated, must be indicated. On the other hand, if it is decided to resume the proceedings, they shall commence, by appointing an enquiry officer, and proceed with the matter, in accordance with law. It is needless to mention that in case, the proceedings are not concluded by the time the petitioner attains the age of superannuation, the respondents shall be under obligation to continue the petitioner in service, beyond the date of superannuation, till the conclusion of disciplinary proceedings. There shall be no order as to costs.

4th January 2006

Note: L.R.Copies be marked.

(B/o)

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